

LEGISLATIVE BILL 176

Approved by the Governor March 18, 2002

Introduced by Bourne, 8

AN ACT relating to sanitary and improvement districts; to amend sections 25-2501, 31-740, 31-741, 31-786 to 31-789, and 31-791, Reissue Revised Statutes of Nebraska; to provide an exemption from eminent domain provisions; to change provisions relating to approval of certain projects; to change bidding and election recall provisions; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 25-2501, Reissue Revised Statutes of Nebraska, is amended to read:

25-2501. It is the intent and purpose of sections 25-2501 to 25-2506 to establish a uniform procedure to be used in acquiring private property for a public purpose by the State of Nebraska and its political subdivisions and by all privately owned public utility corporations and common carriers which have been granted the power of eminent domain. Such sections shall not apply to:

(1) Water transmission and distribution pipelines and their appurtenances and common carrier pipelines and their appurtenances;

(2) Public utilities and cities of all classes and villages when acquiring property for a proposed project involving the acquisition of rights or interests in ten or fewer separately owned tracts or when the acquisition is within the corporate limits of any city or village;

(3) Sanitary and improvement districts organized under sections 31-727 to 31-762 when acquiring easements for a proposed project involving the acquisition of rights or interests in ten or fewer separately owned tracts;

(4) Counties and municipalities which acquire property through the process of platting or subdivision or for street or highway construction or improvements;

~~(4)~~ (5) Common carriers subject to regulation by the Federal Railroad Administration of the United States Department of Transportation; or

~~(5)~~ (6) The Department of Roads when acquiring property for highway construction or improvements.

Sec. 2. Section 31-740, Reissue Revised Statutes of Nebraska, is amended to read:

31-740. (1) The board of trustees or the administrator of any district organized under sections 31-727 to 31-762 shall have power to provide for establishing, maintaining, and constructing gas and electric service lines and conduits, an emergency management warning system, water mains, sewers, and disposal plants and disposing of drainage, waste, and sewage of such district in a satisfactory manner; for establishing, maintaining, and constructing sidewalks, public roads, streets, and highways, including grading, changing grade, paving, repaving, graveling, regraveling, widening, or narrowing roads, resurfacing or relaying existing pavement, or otherwise improving any road, street, or highway within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin; for establishing, maintaining, and constructing public waterways, docks, or wharfs, and related appurtenances; and for constructing and contracting for the construction of dikes and levees for flood protection for the district.

(2) The board of trustees or the administrator of any district may contract for electricity for street lighting for the public streets and highways within the district and shall have power to provide for building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities, and, when permitted by section 31-727, for contracting with other sanitary and improvement districts for the building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, and for contracting for any public purpose specifically authorized in this section. Power to construct clubhouses and similar facilities for the giving of private parties within the zoning jurisdiction of any city or village is not included in the powers granted in this section. Any sewer system established shall be approved by the Department of Health and Human Services Regulation and Licensure.

(3) Prior to the installation of any of the improvements or services provided for in this section, the plans or contracts for such improvements or services, other than for public parks, playgrounds, and recreational facilities, whether a district acts separately or jointly with other districts as permitted by section 31-727, shall be approved by the public works department of any municipality when such improvements or any part thereof or services are within the area of the zoning jurisdiction of such municipality. If such improvements or services are without the area of the zoning jurisdiction of any municipality, plans for such improvements shall be approved by the county board of the county in which such improvements are located. Plans and exact costs for public parks, playgrounds, and recreational facilities shall be approved by resolution of the governing body of such municipality or county after a public hearing. ~~held not less than five days after notice of the hearing has been published in a newspaper of general circulation in such municipality or county.~~ Purchases of public parks, playgrounds, and recreational facilities so approved may be completed and shall be valid notwithstanding any interest of any trustee of the district in the transaction. Such approval shall relate to conformity with the master plan and the construction specifications and standards established by such municipality or county. When no master plan and construction specifications and standards have been established, such approval shall not be required. When such improvements are within the area of the zoning jurisdiction of more than one municipality, such approval shall be required only from the most populous municipality, except that when such improvements are furnished to the district by contract with a particular municipality, the necessary approval ~~may~~ shall in all cases be given by such municipality. The municipality or county shall be required to approve plans for such improvements and shall enforce compliance with such plans by action in equity.

(4) The district may construct its sewage disposal plant and other sewerage or water improvements, or both, in whole or in part, inside or outside the boundaries of the district and may contract with corporations or municipalities for disposal of sewage and use of existing sewerage improvements and for a supply of water for fire protection and for resale to residents of the district. It may also contract with any corporation, public power district, electric membership or cooperative association, or municipality for the installation, maintenance, and cost of operating a system of street lighting upon the public streets and highways within the district, for installation, maintenance, and operation of a water system, or for the installation, maintenance, and operation of electric service lines and conduits, and to provide water service for fire protection and use by the residents of the district. It may also contract with any corporation, municipality, or other sanitary and improvement district, as permitted by section 31-727, for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting parties. It may also contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction the sanitary and improvement district is located for intersection and traffic control improvements, which improvements serve or benefit the district and which may be within or without the corporate boundaries of the district, and for any public purpose specifically authorized in this section.

(5) Each sanitary and improvement district shall have the books of account kept by the board of trustees of the district examined and audited by a certified public accountant or a public accountant for the year ending June 30 and shall file a copy of the audit with the office of the Auditor of Public Accounts by December 31 of the same year. Such audits may be waived by the Auditor of Public Accounts upon proper showing by the district that the audit is unnecessary. Such examination and audit shall show ~~(1)~~ (a) the gross income of the district from all sources for the previous year, ~~(2)~~ (b) the amount spent for sewage disposal, ~~(3)~~ (c) the amount expended on water mains, ~~(4)~~ (d) the gross amount of sewage processed in the district, ~~(5)~~ (e) the cost per thousand gallons of processing sewage, ~~(6)~~ (f) the amount expended each year for ~~(a)~~ (i) maintenance and repairs, ~~(b)~~ (ii) new equipment, ~~(c)~~ (iii) new construction work, and ~~(d)~~ (iv) property purchased, ~~(7)~~ (g) a detailed statement of all items of expense, ~~(8)~~ (h) the number of employees, ~~(9)~~ (i) the salaries and fees paid employees, ~~(10)~~ (j) the total amount of taxes levied upon the property within the district, and ~~(11)~~ (k) all other facts necessary to give an accurate and comprehensive view of the cost of carrying on the activities and work of such sanitary and improvement district. The reports of all audits provided for in this section shall be and remain a part of the public records in the office of the Auditor of Public Accounts. The expense of such audits shall be paid out of the funds of the district. The

Auditor of Public Accounts shall be given access to all books and papers, contracts, minutes, bonds, and other documents and memoranda of every kind and character of such district and be furnished all additional information possessed by any present or past officer or employee of any such district, or by any other person, that is essential to the making of a comprehensive and correct audit.

(6) If any sanitary and improvement district fails or refuses to cause such annual audit to be made of all of its functions, activities, and transactions for the fiscal year within a period of six months following the close of such fiscal year, unless such audit has been waived, the Auditor of Public Accounts shall, after due notice and a hearing to show cause by such district, appoint a certified public accountant or public accountant to conduct the annual audit of the district and the fee for such audit shall become a lien against the district.

(7) Whenever the sanitary sewer system or any part thereof of a sanitary and improvement district is directly or indirectly connected to the sewerage system of any city, such city, without enacting an ordinance or adopting any resolution for such purpose, may collect such city's applicable rental or use charge from the users in the sanitary and improvement district and from the owners of the property served within the sanitary and improvement district. The charges of such city shall be charged to each property served by the city sewerage system, shall be a lien upon the property served, and may be collected from the owner or the person, firm, or corporation using the service. If the city's applicable rental or service charge is not paid when due, such sum may be recovered by the municipality in a civil action or it may be assessed against the premises served in the same manner as special taxes or assessments are assessed by such city and collected and returned in the same manner as other municipal special taxes or assessments are enforced and collected. When any such tax or assessment is levied, it shall be the duty of the city clerk to deliver a certified copy of the ordinance to the county treasurer of the county in which the premises assessed are located and such county treasurer shall collect the same as provided by law and return the same to the city treasurer. Funds of such city raised from such charges shall be used by it in accordance with laws applicable to its sewer service rental or charges. The governing body of any city may make all necessary rules and regulations governing the direct or indirect use of its sewerage system by any user and premises within any sanitary and improvement district and may establish just and equitable rates or charges to be paid to such city for use of any of its disposal plants and sewerage system. The board of trustees shall have power, in connection with the issuance of any warrants or bonds of the district, to agree to make a specified minimum levy on taxable property in the district to pay, or to provide a sinking fund to pay, principal and interest on warrants and bonds of the district for such number of years as the board may establish at the time of making such agreement and shall also have power to agree to enforce, by foreclosure or otherwise as permitted by applicable laws, the collection of special assessments levied by the district. Such agreements may contain provisions granting to creditors and others the right to enforce and carry out the agreements on behalf of the district and its creditors.

(8) The board of trustees or administrator shall have power to sell and convey real and personal property of the district on such terms as it or he or she shall determine, except that real estate shall be sold to the highest bidder at public auction after notice of the time and place of the sale has been published for three consecutive weeks prior to the sale in a newspaper of general circulation in the county. The board of trustees or administrator may reject such bids and negotiate a sale at a price higher than the highest bid at the public auction at such terms as may be agreed.

Sec. 3. Section 31-741, Reissue Revised Statutes of Nebraska, is amended to read:

31-741. For the first eight years after the election of the initial board of trustees pursuant to section 31-735, all contracts for construction work to be done or materials or equipment purchased, the expense of which is more than ~~three~~ ten thousand dollars, and after such eight-year period, all contracts for work to be done or materials or equipment purchased, the expense of which is more than ~~five~~ fifteen thousand dollars, shall be let to the lowest responsible bidder, upon notice of not less than twenty days, of the terms and conditions of the contract to be let. The board of trustees or the administrator shall have power to reject any and all bids and readvertise for the letting of such work or to negotiate any contract after an unsuccessful public letting.

Sec. 4. Section 31-786, Reissue Revised Statutes of Nebraska, is amended to read:

31-786. For purposes of sections 31-786 to 31-793:

(1) Filing clerk means the election commissioner or county clerk of the county in which all or the largest portion of the land area comprising a sanitary and improvement district is located;

(2) Qualified property owning voter means a person entitled to vote as provided in section 31-735 for all trustees of a sanitary and improvement district other than those which may be elected only by qualified resident voters; and

~~(2) (3) Qualified resident voter means a person entitled to vote as provided in section 31-735 for all trustees of a sanitary and improvement district. as provided in section 31-735.~~

Sec. 5. Section 31-787, Reissue Revised Statutes of Nebraska, is amended to read:

31-787. (1) A trustee of a sanitary and improvement district may be removed from office by recall pursuant to sections 31-786 to 31-793. A petition demanding that the question of removing a trustee be submitted to the qualified ~~voters~~ resident voters or qualified property owning voters that elected such trustee shall be signed by qualified ~~voters~~ resident voters or qualified property owning voters, as the case may be, who represent at least thirty-five percent of the number of votes cast for the trustee ~~receiving~~ who received the most votes in the last district election pursuant to section 31-735 and who was elected by the same voters as the trustee whose recall is being sought. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Each circulator of a recall petition shall be a qualified resident voter of the district on the date of the issuance of the initial petition papers if the trustee whose recall is being sought was elected solely by qualified resident voters. Each circulator of a recall petition may be a qualified resident voter or qualified property owning voter on the date of the issuance of the initial petition papers if the trustee whose recall is being sought was elected by other qualified resident voters and qualified property owning voters.

(3) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, an affidavit shall be signed and filed with the filing clerk by at least one qualified voter qualified as provided in subsection (2) of this section to circulate a petition regarding the recall of the subject trustee. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The affidavit shall state the name of the trustee sought to be removed and whether qualified property owning voters participated in the election of the trustee and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days after the date of issuing the petitions.

(4) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, and the number of papers issued, and whether qualified property owning voters may participate in signing the petitions. The filing clerk shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued, and the date they were issued, and whether qualified property owning voters may participate in signing the petitions. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to qualified voters of the district who may act as circulators of such petitions.

(5) Each signer of a recall petition shall be a (a) qualified ~~voter~~ of the district to vote in a district election on the date of the issuance of the initial petition papers and (b) a qualified resident voter if the trustee whose recall is being sought was elected solely by qualified resident voters.

Sec. 6. Section 31-788, Reissue Revised Statutes of Nebraska, is amended to read:

31-788. (1) The Secretary of State shall design the uniform petition papers to be distributed by all filing clerks for use in the recall of trustees of sanitary and improvement districts and shall keep a sufficient number of such blank petition papers on file for distribution to any filing clerk requesting recall petitions.

(2) Each petition paper presented to a qualified voter for his or her signature shall clearly indicate at the top (a) whether the trustee whose recall is being sought was elected solely by qualified resident voters, (b) whether the signatories must be qualified resident voters or may include

qualified property owning voters, (c) that the signatories must be qualified voters and support the holding of a recall election for the trustee, (b) (d) the name of the individual sought to be recalled, and (e) (e) a general statement of the reason or reasons for which recall is sought.

(3) Each petition paper shall contain a statement entitled Instructions to Petition Circulators prepared by the Secretary of State to assist circulators in understanding the provisions governing the petition process established by sections 31-786 to 31-793. The instructions shall include the following statements:

(a) No one shall circulate this petition paper in an attempt to gather signatures unless he or she ~~is~~ would be qualified on the date of the issuance of the initial petition papers to vote in an election of trustees as provided in section 31-735 for the election of the trustee of the sanitary and improvement district as provided in section 31-735 on the date of the issuance of the initial petition papers whose recall is being sought.

(b) No one circulating this petition paper in an attempt to gather signatures shall sign the circulator's affidavit unless each person who signed the petition paper did so in the presence of the circulator.

Sec. 7. Section 31-789, Reissue Revised Statutes of Nebraska, is amended to read:

31-789. (1) The principal circulator or circulators shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the filing clerk within thirty days after the filing clerk issues the initial petition papers to the principal circulator or circulators as provided in section 31-787.

(2) Within fifteen days after the filing of the petition, the filing clerk shall ascertain whether or not the petition is signed by ~~qualified voters representing at least thirty-five percent of the number of votes cast for the trustee receiving the most votes in the last district election~~ sufficient qualified resident voters and qualified property owning voters as provided in subsection (1) of section 31-787. No new signatures may be added after the initial filing of the petition papers. No signatures may be removed unless the filing clerk receives an affidavit signed by the person requesting that his or her signature be removed before the petitions are filed with the filing clerk for signature verification.

(3) If the petition is found to be sufficient, the filing clerk shall attach to the petition a certificate showing the result of such examination. If the petition is found not to be sufficient, the filing clerk shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose.

Sec. 8. Section 31-791, Reissue Revised Statutes of Nebraska, is amended to read:

31-791. The form of the official ballot at a recall election conducted pursuant to section 31-790 shall conform to the requirements of this section. With respect to each trustee whose removal is sought, the question shall be submitted: Shall (name of trustee) be removed from the office of trustee? Immediately following each such question there shall be printed on the ballot the two responses: Yes and No. Immediately to the left of each response shall be placed a square or oval in which the ~~qualified~~ qualified voters qualified to vote for the trustee in a regular election may vote for one of the responses by making a cross or other clear, identifiable mark. The name of the trustee which shall appear on the ballot shall be the name of the trustee that appeared on the ballot of the previous election that included his or her name.

Sec. 9. Original sections 25-2501, 31-740, 31-741, 31-786 to 31-789, and 31-791, Reissue Revised Statutes of Nebraska, are repealed.